IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 381 of 1986

in

SPECIAL CIVIL APPLICATIONNo 5565 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

RD PANDYA

Versus

GUJARAT STATE HANDLOOM DEVE CORPORATION LTD

Appearance:
MR HM PARIKH for Appellant
MR SV RAJU for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

Date of decision: 04/12/98

ORAL JUDGEMENT [PER : B.C.PATEL, J]

The appellant-original ptitioner, being aggrieved

by the order passed by learned Single Judge dismissing Special Civil Application No. 5565/ 82 has preferred this appeal.

By the order dated 31.5.1982 which is produced at Annexure : A to the petition, the appellant was appointed as a Manager (Technical) on proboation for a period of one year. During the probation period, by the order dated 30.11.1982 at Annex.C, services of the appellant were terminated conveying him that since the services of the appellant were no more required by the Corporation, his services were terminated.

Mr.Shah, learned counsel appearing for the appellant submitted that as contemplated under Rule 24 read with offer of appointment and letter of appointment, notice pay was not paid to the appellant on the spot and, therefore, the order is bad and must be quashed. He further submitted that the order clearly indicates that it is arbitrary order and penal in nature and, therefore, the said order must be quashed and set aside. Before the ld. Single Judge, it was submitted that by payment of one month's basic pay in lieu of notice, services can be terminated. Before us, relying on Rule : 24 which reads as under, it is submitted that payment is a must before services are terminated.

> " During the probationary period, an employee may be discharged from the service of the Corporation by the appointing authority without assigning any reason or he may leave the service of the Corporation after giving of one month's notice by either party in writing in that behalf or by payment of one month's basic pay in lieu of such notice. Provided that the Managing Director may for sufficient reasons in any particular case waive the requirement of basic pay by the employee."

So far as offer of appointment is concerned, later part of clause (3) which is relevant reads as under:-

> "..... The appointing authority, however, reserves the right of terminating the services of the appointee forthwith or before expiry of the stipulated period of notice by making payment of a sum equivalent to pay for the period or the unexpired portion thereof."

The same language is used in the letter of

appointment and hence we are not repeating the same.

Mr. Shah, learned counsel relying on the aforesaid Rule: 24 and letter of appointment, has submitted that the payment must precede termination.

On behalf of respondent, affidavit-in-reply was filed and it was pointed out that the appellant knew very well from 30.11.1982 that the moment he approaches the Account Sections, he would get his one month's notice pay. Reading the letter, it appears that there is justification in what is stated. If the appellant would have gone to the Accounts Sections, he would have got money which he was entitled to get. Along with the affidavit-in-reply filed by the respondent, a copy of the letter forwarded to the Accounts Section is also produced and from that, it is very clear that the Accounts Office was also informed to make payment to the appellant. After affidavit was filed by the respondent, the appellant for the first time, came out with a version that he had been to the Accounts Section, but amount was not paid to him. This is not his original version in the petition and in view of the language used in the letter, with the improved version the appellant has come before the Court. In the letter, it is specifically stated that " Shri Pandya should settle his accounts with Accounts Section within 2 days" and, therefore, he could have gone immediately after receiving the letter or even thereafter within a period of two days. If the respondent would have mentioned in the letter that he should approach the Accounts Section after a period of

two days, then there would have been some substance in what has been contended by learned counsel Mr. Shah.

There is no provision that amount is to be paid forthwith. Learned Single Judge has rightly not believed this say of the appellant. It is interesting to note that the appellant withdrew a sum of Rs. 1550/ in advance and considering the amount of his salary, which is less then the amount withdrawn, the appellant must not have gone to collect the amount and, therefore, learned Single Judge has rightly rejected the said contention. In our view, the appellant- petitioner has supressed material facts in the petition by not stating that he approached the Accounts Section on the same day to collect his salary, but when affidavit-in-reply was filed pointing out the real state of affairs, the appellant came out with the version that he had gone to the Accounts Section for collecting the salary and he was not paid. This is an afterthought version and in view of this, no reliance can be placed on such a version of the appellant. In view of this, we would not like to

interfere with the order passed by learned Single Judge. Mr.Shah, learned counsel appearing for the appellant drew our attention to the decision in the case of Senior Superintendent, R.M.S. Cochin & Another v/s K.V. Gopinath, reported in AIR 1972 SC 1487. In the said decision, it has been observed that "The operative words of the proviso are "the services of any such Government servant may be terminated forthwith by payment". Therefore, to be effective the termination of

service has to be simultaneous with the payment to the employee of whatever is due to him."

In the case of Raj Kumar v/s Union of India and others, reported in AIR 1975 SC 1116, the Apex Court pointed out that the effect of the amendment is that even though the Government has "forthwith" terminated the servies of a temporary employee, it is not obligatory on the Government to pay him a month's emoluments in viw of notice in spite of its direction to pay in the order of termination and the Gvernment servant is only entitled to claim a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing immediately before the date on which the order was served on or as the case may be for the period by which such notice falls short of one month. The Government servant concerned is only entitled to claim the sums.

In the instant case, reading the Rules, it is very clear that the amount is not to be paid forthwith or there is nothing to indicate that as a condition precedent the amount should be paid first, but that Rule indicates that by payment of one month's basic pay in lieu of notice, services can be terminated. At the same time, when a person is requested to approach Accounts Section for collecting the amount, it cannot be said that he was not offered payment soon after. It was open for the appellant to approach Accounts Section soon after receipt of the letter to collect the salary, but having not done

so, grievance cannot be made in petition. In para-7 of the petition, it is stated as under :-

" No offer or payment of notice pay is made to him either under the said order or otherwise."

As said earlier, letter clearly reveals that offer was made and it was open for the appellant to approach the Accounts Section on the receipt of a letter

or any time therefter within a period of two days. Instead of words "within two days" used in the letter, if the words "after two days" would have been used, then certainly, it can be said that the payment was delayed and was not tobe paid on the same day.

Section 25F of the Industrial Disputes Act, 1947 indicates that payment is a condition precedent if the workman is to be retrenched. Effect of asking the person concerned to collect the amount subsequently instead of offering on the same day was considered by the Apex Court in the case of National Iron and Steel Company Ltd. and others v/s State of West Bengal and another, reported in (1967)II LL.J. Page 23. In that case, by notice dated 15.11.1958, the concerned workman was retrenched with effect from 17.11.1958 and he was asked to collect one month's wages in lieu of notice from the cash office on 20.11.1958 or thereafter. In that event, order of retrenchment was held tobe illegal as the employee concerned was not asked to go and collect his dues forthwith. It appears that in the aforesaid case, the employee was asked to go forthwith and was asked to collect the amount later-on. It was incumbent on the part of the employer to pay the workman the wages in lieu of notice and he could not have been asked to go and collect his dues afterwards. In the instant case, as words used were " within two days", the appellant could have collected the amount on the same day and, therefore, we do not find any merits in the submissions made by Mr. Shah, learned counsel appearing for the appellant.

About the action being arbitrary and penal in nature, learned counsel for the appellant could not point out that the appellant being a probationer, his services could not have been terminated with immediate effect. When the services are terminated without any stigma, it cannot be said that the same is penal in nature. Reading affidavit-in-reply, Mr. Shah could not point out that the action can be said to be arbitrary or penal in nature.

In view of what is stated herein above, we do not find any merits in the appeal and appeal stands dismissed with no orders as to costs.

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